

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No.634 of 1991

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For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 to 5 : NO

STATE OF GUJARAT

Versus

NARAYAN KANA AYAR

Appearance:

Shri B.Y. Mankada, ADDLL. PUBLIC PROSECUTOR for
appellant

MR PRAFUL J BHATT for Respondent No. 1, 2

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 08/10/98

ORAL JUDGEMENT :

The State has preferred this appeal being aggrieved by an order of acquittal recorded by the learned Chief Judicial Magistrate, Kutch- Bhuj on 28.2.1991 in Criminal Case No.438 of 1986 wherein the respondents (hereinafter referred to as "the accused") were tried for offences punishable under secs.324, 325, 403, and 114 of Indian Penal Code and under sec.135 of

the Bombay Police Act.

2. From the record it transpires that Kankuben lodged an FIR before the Police on 11.9.1985 at about 09.30 AM for an incident which took place on or about 06.00 AM on 11.9.1985. From the complaint it appears that the husband of Kankuben went towards the bus stand as the daughter and son in law were leaving the village. As there was some delay in arrival of the bus she went to bring a cup of tea and returned along with Chanubhai PW 7. It is stated in the complaint that as her husband forgot to take stick with him, Chanubha accompanied with the stick to give it to her husband. On the way, accused no.1 and his son were seen coming in a cart who stopped the cart. The complainant and Chanubha were passing through the hedgeway. Son of Narayan Kana Ayar, accused no.1 questioned as to why they are passing through the hedgeway. It is her say in the complaint that without answering they were walking. Narayan, accused no.1 delivered a blow by means of an axe on the head of Chanubha. He delivered second blow on the right shoulder of Chanubha. As a result of which he sustained bleeding injuries. She intervened and accused delivered a blow by means of axe which landed on rear portion of the shoulder of the left hand. Her husband and Muktaben, PW 5, her daughter came running. Son of Narayan, i.e. accused no.2 delivered a blow by means of stick on the right hand of Muktaben, as a result of which golden bangle put on by her fell on the ground. It is stated by her in the complaint that Velubha and Karsan Kachra arrived on the spot and thereafter the accused fled away. The Police commenced investigation on this complaint. After the completion of the investigation the Police filed a charge sheet against the accused. The charge, exh.9 was framed by the trial court to which the accused pleaded not guilty.

3. On appreciation of evidence the trial court came to the conclusion that benefit of doubt should be given to the accused, as a result of which the trial court passed an order of acquittal.

4. Shri Mankad, learned APP submitted that Kankuben, PW 1 and Chanubha PW 7, injured eye witnesses in their deposition pointed out as to how they sustained injuries at the hands of the accused. Muktaben, daughter of PW 1, who came on the spot has also narrated the incident. Deva Jasa, PW 4 has corroborated the evidence of the injured witnesses. However, the trial court has erred in appreciating the evidence and instead of convicting the accused has given the benefit of doubt to the accused.

5. From the medical evidence of Dr.Suresh Kanjibhai Parekh, PW 6, it transpires that the injured Kankuben and Chanubha sustained injuries by means of a blow which could be caused by a stick. The Medical Officer is specific in his version that the injuries were possible by hard and blunt substance. It is specific case of Kankuben, PW 1 that blade portion of the axe was used for causing injuries. The trial court has considered this aspect in detail and has preferred to rely on the medical evidence and came to the conclusion that the witnesses are not giving accurate story of the incident. The trial court also observed that as per the complaint, Verubha and Karsan Kachra arrived on the spot, and after their arrival accused fled away. The Investigating Officer has not recorded their statements though their names appeared in the complaint. Kankuben in her testimony before the court denied the arrival of Karsan, though in her complaint she has specifically stated that only after arrival of Karsan, Kachra and Verubha, the accused, fled away.

6. Muktaben, PW 5 has stated that a blow was delivered on her person by accused no.2 on the right hand. Surprisingly there is nothing to indicate that she sustained any injury. Her case is that because of the blow delivered her golden bangle fell on the ground as it was broken. She stated that she took away the bangle while Kankuben stated that it was left at the place where it fell down. Chanubha, PW 7 who sustained injuries stated before the court that his statement has not been recorded by the Police and he has narrated the incident for the first time before the Court. Kankuben stated that she was unconscious. However, she has stated in her evidence that she was taken in a bus. Medical Officer has stated that Chanubha has given history of the incident.

7. Diva Jesha, PW 4, who is examined by the prosecution has stated in chief examination as if the incident took place in his presence. In the cross examination he stated that when he arrived at the scene of occurrence the incident was over. He has no idea as to what happened before his arrival. The trial court has observed that he is a chance witness. Apart from the fact that he is an interested witness as it appears from the evidence.

8. In view of what is stated hereinabove I am in agreement with the view taken by the trial court. The trial court has appreciated the evidence in detail. As

observed by the Apex Court in the case of State of Karnataka v. Hema Reddy and another, AIR 1981 SC 1417 that :

"This Court has observed in Girija Nandini Devi v. Bigendra Nandini Chaudry, (1967) 1 SCR 93 : (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of the general agreement with reasons given by the court the decision of which is under appeal, will ordinarily suffice."

This court is in agreement with views expressed by trial court. The learned Public Prosecutor could not point out as to how the view taken by trial court is perverse. Hence I do not find it necessary to discuss the evidence in detail.

8. This is an appeal against the order of acquittal and from the evidence it cannot be said that the finding recorded by the trial court is perverse or the view taken by the trial court is not a possible view. Hence this appeal is required to be dismissed and is hereby dismissed.

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